

FILED

PETITION FOR A WRIT OF HABEAS CORPUS BY A PERSON IN CUSTODY

Prisoner Number 96766-01

Institutional Address 111 Taylor St. San Francisco, Calif. 94102
Telephone: (415) 346-9769 (Corvall Corrections, Inc.)

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

Burgess Raymond CROSBY

(Enter the full name of plaintiff in this action.)

VS

USA

09

3048

Case No.

(To be provided by the clerk of court)

**PETITION FOR A WRIT
OF HABEAS CORPUS**

(Enter the full name of respondent(s) or jailor in this action)

Read Comments Carefully Before Filling In

When and Where to File

18 You should file in the Northern District if you were convicted and sentenced in one of these
19 counties: Alameda, Contra Costa, Del Norte, Humboldt, Lake, Marin, Mendocino, Monterey, Napa,
20 San Benito, Santa Clara, Santa Cruz, San Francisco, San Mateo and Sonoma. You should also file in
21 this district if you are challenging the manner in which your sentence is being executed, such as loss of
22 good time credits, and you are confined in one of these counties. Habeas L.R. 2254-3(a).

If you are challenging your conviction or sentence and you were not convicted and sentenced in one of the above-named fifteen counties, your petition will likely be transferred to the United States District Court for the district in which the state court that convicted and sentenced you is located. If you are challenging the execution of your sentence and you are not in prison in one of these counties, your petition will likely be transferred to the district court for the district that includes the institution where you are confined. Habeas L.R. 2254-3(b).

Who to Name as Respondent

You must name the person in whose actual custody you are. This usually means the Warden or
jailor. Do not name the State of California, a city, a county or the superior court of the county in which
you are imprisoned or by whom you were convicted and sentenced. These are not proper
respondents.

If you are not presently in custody pursuant to the state judgment against which you seek relief but may be subject to such custody in the future (e.g., detainers), you must name the person in whose custody you are now and the Attorney General of the state in which the judgment you seek to attack was entered.

10 A. INFORMATION ABOUT YOUR CONVICTION AND SENTENCE

11 1. What sentence are you challenging in this petition?

12 (a) Name and location of court that imposed sentence (for example; Alameda

15	Court	Location
16	(b) Case number, if known	<u>CR-01-6423-15-MNT</u>
17	(c) Date and terms of sentence	<u>6/23/05 8 yrs. w/ 1 yr. Sup. Release</u>
18	(d) Are you now in custody serving this term? (Custody means being in jail, on	
19	parole or probation, etc.)	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>

20 Where? Concept Corrections, Inc.

21 Name of Institution: (Half-Way House)

Address: 111 Taylor St. San Francisco, CA 94102

23 2. For what crime were you given this sentence? (If your petition challenges a sentence for
24 more than one crime, list each crime separately using Penal Code numbers if known. If you are
25 challenging more than one sentence, you should file a different petition for each sentence.)

21 USC 843(b) (Two Counts)

1 3. Did you have any of the following?

2 Arraignment: Yes No _____

3 Preliminary Hearing: Yes No _____

4 Motion to Suppress: Yes _____ No _____

5 4. How did you plead?

6 Guilty Not Guilty _____ Nolo Contendere _____

7 Any other plea (specify) _____

8 5. If you went to trial, what kind of trial did you have? N/A

9 Jury _____ Judge alone _____ Judge alone on a transcript _____

10 6. Did you testify at your trial? Yes _____ No N/A

11 7. Did you have an attorney at the following proceedings:

12 (a) Arraignment Yes No _____

13 (b) Preliminary hearing Yes No _____

14 (c) Time of plea Yes No _____

15 (d) Trial Yes No _____

16 (e) Sentencing Yes No _____

17 (f) Appeal Yes No

18 (g) Other post-conviction proceeding Yes _____ No _____

19 8. Did you appeal your conviction? Yes _____ No _____

20 (a) If you did, to what court(s) did you appeal?

21 Court of Appeal Yes _____ No

22 Year: _____ Result: _____

23 Supreme Court of California Yes _____ No

24 Year: _____ Result: _____

25 Any other court Yes _____ No

26 Year: _____ Result: N/A _____

27 (b) If you appealed, were the grounds the same as those that you are raising in this

1 petition? Yes _____ No _____

2 (c) Was there an opinion? Yes _____ No _____

3 (d) Did you seek permission to file a late appeal under Rule 31(a)?

4 Yes _____ No _____

5 If you did, give the name of the court and the result:

6 N/A

7 8. Other than appeals, have you previously filed any petitions, applications or motions with respect to
9 this conviction in any court, state or federal? Yes _____ No _____

10 [Note: If you previously filed a petition for a writ of habeas corpus in federal court that
11 challenged the same conviction you are challenging now and if that petition was denied or dismissed
12 with prejudice, you must first file a motion in the United States Court of Appeals for the Ninth Circuit
13 for an order authorizing the district court to consider this petition. You may not file a second or
14 subsequent federal habeas petition without first obtaining such an order from the Ninth Circuit. 28
15 U.S.C. §§ 2244(b).]

16 (a) If you sought relief in any proceeding other than an appeal, answer the following
17 questions for each proceeding. Attach extra paper if you need more space.

18 I. Name of Court: N/A

19 Type of Proceeding: N/A

20 Grounds raised (Be brief but specific):

21 a. N/A

22 b. N/A

23 c. N/A

24 d. N/A

25 Result: N/A Date of Result: N/A

26 II. Name of Court: N/A

27 Type of Proceeding: N/A

28 Grounds raised (Be brief but specific):

- 1 a. _____ N/A
2 b. _____
3 c. _____
4 d. _____

5 Result: _____ N/A Date of Result: _____ N/A

6 III. Name of Court: _____ N/A

7 Type of Proceeding: _____ N/A

8 Grounds raised (Be brief but specific):

- 9 a. _____ N/A
10 b. _____ N/A
11 c. _____ N/A
12 d. _____ N/A

13 Result: _____ N/A Date of Result: _____ N/A

14 IV. Name of Court: _____ N/A

15 Type of Proceeding: _____ N/A

16 Grounds raised (Be brief but specific):

- 17 a. _____ N/A
18 b. _____ N/A
19 c. _____ N/A
20 d. _____ N/A

21 Result: _____ N/A Date of Result: _____ N/A

22 (b) Is any petition, appeal or other post-conviction proceeding now pending in any court?

23 Yes _____ No

24 Name and location of court: _____ N/A

25 B. GROUNDS FOR RELIEF

26 State briefly every reason that you believe you are being confined unlawfully. Give facts to
27 support each claim. For example, what legal right or privilege were you denied? What happened?

28 Who made the error? Avoid legal arguments with numerous case citations. Attach extra paper if you

1 need more space. Answer the same questions for each claim.

2 [Note: You must present ALL your claims in your first federal habeas petition. Subsequent
3 petitions may be dismissed without review on the merits. 28 U.S.C. §§ 2244(b); McCleskey v. Zant,
4 499 U.S. 467, 111 S. Ct. 1454, 113 L. Ed. 2d 517 (1991).]

5 Claim One: Lack of Subject Matter Jurisdiction; there
6 was no implementing regulation in the indictment

7 Supporting Facts: The indictment had no implementing regulation
8 included. An individual cannot be prosecuted for any violation
9 & the ACT unless he violates the required implementing regulation.
10 As such, government failed to prove subject matter
jurisdiction. US v. Murphy, 809 F.2d 1427 (1st Cir. 1987)

11 (see attached Mekka of law)
Claim Two:

12 _____
13 Supporting Facts: _____
14 _____
15 _____
16 _____

17 Claim Three:
18 _____
19 Supporting Facts:
20 _____
21 _____
22 _____

23 If any of these grounds was not previously presented to any other court, state briefly which
24 grounds were not presented and why:
25 _____
26 _____
27 _____
28 _____

1 List, by name and citation only, any cases that you think are close factually to yours so that they
2 are an example of the error you believe occurred in your case. Do not discuss the holding or reasoning
3 of these cases:

4 See ATTACHED Memo of Law
5 _____
6 _____

7 Do you have an attorney for this petition? Yes _____ No

8 If you do, give the name and address of your attorney:
9 N/A (Pro Se)

10 WHEREFORE, petitioner prays that the Court grant petitioner relief to which s/he may be entitled in
11 this proceeding. I verify under penalty of perjury that the foregoing is true and correct.

12
13 Executed on 6/23/08 Burgess Raymond Crosby
14 Date Signature of Petitioner

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20 (Rev. 6/02)
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28

Burgess Raymond Crosby
 Reg. 96766-011
 111 Taylor Street
 San Francisco, CA 94102
 Phone: (415) 346-9769

Petitioner, Pro se.

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

BURGESS RAYMOND CROSBY,)	
)	
Petitioner,)	CASE NO: _____
)	
vs.)	PETITION FOR WRIT OF HABEAS
)	CORPUS PURSUANT TO 28 U.S.C.
UNITED STATES OF AMERICA,)	2241; DECLARATION OF BURGESS
)	RAYMOND CROSBY.
Respondent.)	
<hr/>		

Comes Now, Burgess Raymond Crosby, Pro se, and moves the Court for issuance of a writ of habeas corpus. Hughes v. Rowe, 404 U.S. 5 (1980). Accord, Nadrid v. Stewart, 354 F.3d 1134, 1140, n. 4 (9th Cir. 2004). Petitioner is being held in custody in violation of the First, Fourth and Fifth Amendments of the U.S. Constitution as guaranteed by virtue of an order entered by a Court without subject matter jurisdiction.

JURISDICTION

The jurisdiction of the Court is invoked pursuant to 28 U.S.C. 2241. It is additionally submitted that three (3) factors support Petitioner's application for issuance of the writ, e.g. more fully referenced, infra, in the following subparts of the case, at bench:

- (A) Petitioner is being held at a Community Correctional Facility in the geographical area of the United States District Court for the Northern District of California;
- (B) The Judiciary Act of 1867, as noted in *Fay v. Noia*, 372 U.S. 391, 9 L.Ed.2d 837, 83 S.Ct. 822 (1963), and *Bell v. Hill*, 190 F.3d 1089 (9th Cir. 1999); and
- (C) Article I, Section 9, Clause 2 of the U.S. Constitution.

FACTS AND CLAIMS

The Petitioner was indicted in the United States District Court for the Northern District of California in the case of *United States v. Burgess*, No. CR-01-0423-15-MJJ (USDC, ND, 2001). The District Court does not have any proof of subject matter jurisdiction that could have affirmatively supported jurisdiction upon its record. Since the record fails to contain the relevant subject matter jurisdiction, the court lacks all jurisdiction. See *Bender v. Williamsport Area School District*, 475 U.S. 546 (1986). Because of the habeas corpus challenging the jurisdiction of Case No. CR-01-0423-15-MJJ, the Respondent, United States of America, is required now to prove that the Court had Jurisdiction. See *Thomas v. Gaskill*, 315 U.S. 442, 475 (1945). Moreover, the Officers of the Court, that were attached to the criminal proceedings in the instant case, knew that the court lacked the requisite subject matter jurisdiction and remained silent regarding the fact that the government never documented the subject matter jurisdiction. The Judgment of the Court is, therefore, unconstitutional and the writ of habeas corpus must issue commanding release, forthwith. That this is based upon the fact that the indictment, original charging

instrument, is required to set forth the nexus of jurisdiction for the court.

We find that the United States District Court for the Northern District of California proceeded wholly without the requisite subject-matter jurisdiction from the onset of the case, to the completion of the proceedings, in contravention of the dictates of the Constitution. Even if Petitioner entered a guilty plea that waived all constitutional defects, his plea did not confer the court with the prerequisite jurisdiction. In United States v. Ventre, 338 F.3d 1047 (9th Cir. 1991), the Ninth Circuit stated:

"...no action of the parties can confer subject-matter jurisdiction upon a federal court. The validity of any order of a federal court depends on the court having jurisdiction over both the subject matter and parties."

Id. (Quoting) Insurance Corp., 465 S.Ct. at 701, (held in) Constantine v. Rectors, George Mason University, 411 F.3d 474, 480 (4th Cir. 2005). The lack of jurisdiction of a court, additionally, renders a judgment devoid of any validity, equating to a missing element and, as such, is subject to the provisions of 28 U.S.C. 2241. See, e.g. Davis v. Crabtree, 10 F.Supp.2d 1136 (USDC, D.OR., 1998)(quoting) Triestman v. United States, 124 F.3d 361. See also In re Dorsainvil, 119 F.3d 245, 251 (3rd Cir. 1997); Maybeck v. United States, 23 F.3d 888 (4th Cir. 1997).

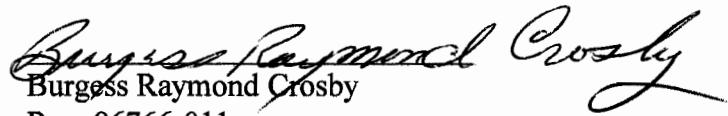
The certainty is that absent subject-matter jurisdiction, a case of actual innocence is presented. With that stated, the habeas corpus must be granted. Petitioner is entitled to relief under section 2241 because of the inadequate and ineffectiveness of 28 U.S.C. 2255 provisions. Lack of jurisdiction constitutes lack of all of a court's jurisdiction.

CONCLUSION

For the foregoing reasons, the writ of habeas corpus must be issued, commanding Petitioner's release from custody, forthwith.

Dated this 23 day of June, 2008.

Respectfully submitted,



Burgess Raymond Crosby
Reg. 96766-011
111 Taylor Street
San Francisco, CA 94102
(415) 346-9769

Petitioner, Pro se.

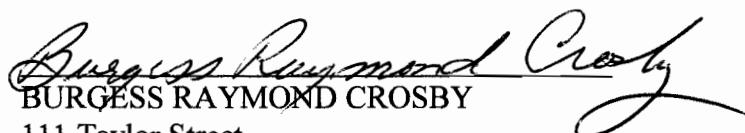
CERTIFICATE OF SERVICE

The undersigned hereby certifies he did personally deliver by hand the forgoing Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. 2241, by handing it to an agent or the proper party at the following address:

Clerk of the Court
U.S. District Court
Northern District of California
450 Golden Gate Avenue
San Francisco, CA 94102
(original plus two)

United States Attorney's Office
U.S. Attorney
Federal Building
450 Golden Gate Avenue
San Francisco, CA 94102
(One copy)

all on this 23 day of June, 2008, and declare that the foregoing is true and correct under the penalty of perjury per 28 U.S.C. 1746.


BURGESS RAYMOND CROSBY
111 Taylor Street
San Francisco, CA 94102

Petitioner, Pro se.

CO8-3048PJH

JS 44 (Rev. 12/07) (and rev 1-16-08)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON PAGE TWO OF THE FORM.)

I. (a) PLAINTIFFS

Burgess Raymond Crosby

(b) County of Residence of First Listed Plaintiff
(EXCEPT IN U.S. PLAINTIFF CASES)

SAN FRANCISCO

(c) Attorney's (Firm Name, Address, and Telephone Number)

Burgess Raymond Crosby
Reg. # 96766-011

111 TAYLOR STREET

SAN FRANCISCO, California 94102 (PRO SE)

DEFENDANTS

UNITED STATES OF AMERICA

E-filing

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- | | |
|---|--|
| <input type="checkbox"/> 1 U.S. Government Plaintiff | <input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) |
| <input checked="" type="checkbox"/> 2 U.S. Government Defendant | <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III) |

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> PERSONAL INJURY	<input type="checkbox"/> PERSONAL INJURY	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury—Med. Malpractice	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury — Product Liability		<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assau, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability		<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability			<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine			<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability			<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle			<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability			<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury			<input type="checkbox"/> 850 Securities/Commodities/ Exchange
<input type="checkbox"/> 195 Contract Product Liability				<input type="checkbox"/> 875 Customer Challenge 12 USC 3410
<input type="checkbox"/> 196 Franchise				<input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	SOCIAL SECURITY	<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 861 HIA (1395ff)	<input type="checkbox"/> 892 Economic Stabilization Act
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	<input checked="" type="checkbox"/> Habeas Corpus	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 530 General	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 894 Energy Allocation Act
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment	<input type="checkbox"/> 540 Mandamus & Other	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 900Appeal of Fee Determination
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer. w/Disabilities - Other	<input type="checkbox"/> 550 Civil Rights		<input type="checkbox"/> Under Equal Access to Justice
	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 555 Prison Condition		<input type="checkbox"/> 950 Constitutionality of State Statutes
IMMIGRATION	FEDERAL TAX SUITS			
	<input type="checkbox"/> 462 Naturalization Application	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)		
	<input type="checkbox"/> 463 Habeas Corpus – Alien Detainee	<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609		
	<input type="checkbox"/> 465 Other Immigration Actions			

V. ORIGIN (Place an "X" in One Box Only)

- | | | | | | | |
|---|---|--|---|---|---|---|
| <input checked="" type="checkbox"/> 1 Original Proceeding | <input type="checkbox"/> 2 Removed from State Court | <input type="checkbox"/> 3 Remanded from Appellate Court | <input type="checkbox"/> 4 Reinstated or Reopened | <input type="checkbox"/> 5 another district (specify) _____ | <input type="checkbox"/> 6 Multidistrict Litigation | <input type="checkbox"/> 7 Judge from Magistrate Judgment |
|---|---|--|---|---|---|---|

Transferred from

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 U.S.C. 2241

Brief description of cause:

USA LACK OF JURISDICTION IN CR-01-0423-15-MJT

VII. REQUESTED IN COMPLAINT:

 CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE "NOTICE OF RELATED CASE".

IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2)
(PLACE AND "X" IN ONE BOX ONLY)

DATE

6/23/08

SIGNATURE OF ATTORNEY OF RECORD

Burgess Raymond Crosby pro se

Court Name: U.S. District Court, NDCA
Division: 3
Receipt Number: 34611020456
Cashier ID: sprinka
Transaction Date: 06/23/2008
Payer Name: BURGESS CROSBY

WRIT OF HABEAS CORPUS
For: BURGESS CROSBY
Amount: \$5.00

CASH
Amt Tendered: \$5.00
Total Due: \$5.00
Total Tendered: \$5.00
Change Amt: \$0.00

08-3048PJH

Checks and drafts are accepted
subject to collections and full
credit will only be given when the
check or draft has been accepted by
the financial institution on which
it was drawn.